

LOCAL LAW NO. ____ OF 2020

**TOWN BOARD
TOWN OF BEDFORD**

**LOCAL LAW REGARDING
ENACTMENT OF A MORATORIUM**

A LOCAL LAW to enact
moratorium on
residential development
in the Hamlet of
Katonah

BE IT ENACTED by the Town Board of the Town of Bedford as follows:

SECTION 1. TITLE

This local law shall be entitled, “A Local Law, pursuant to Municipal Home Rule Law § 10, to enact a moratorium with respect to the filing of applications and review of certain special use, site plan, and subdivision applications that require the Commission or Public Works to allocate new wastewater flow pursuant to Town Code Chapter 91, Section 14.B(3), by means of amending Chapter 91, of the Town Code of the Town of Bedford.”

SECTION 2. LEGISLATIVE INTENT AND PURPOSE

The Town Board hereby finds as follows:

1. The Town of Bedford is in the process of constructing a sewer system known as the Bedford Hills – Katonah Business District Sewer System (the “Sewer System”). The Sewer System will provide sewer service to certain areas in the Katonah business district as well as other areas in the Town of Bedford. In conjunction with the creation of the Sewer System, the Town of Bedford Town Board (the “Town Board”) adopted a Local Law creating Chapter 91 of the Town Code of the Town of Bedford entitled “Public Sewer System”. Chapter 91 establishes the procedures for making connections to the Sewer System and the specific limits for pollutant discharges which, by their nature or by their interaction with sewage, will be detrimental to the public health, cause damage to the Sewer System, pollute the waters of the state or otherwise create a public nuisance.

2. Chapter 91, Section 14, sets procedures relating to allocation of uncommitted reserve sewer capacity available from the Publicly Owned Treatment Works (“POTW”) treatment plant operated by the Town in accordance with a State Pollutant Discharge Elimination System (“SPDES”) permit issued by the New York State Department of Environmental Conservation. The Town is obligated by law to comply with conditions of that SPDES permit and to operate and manage the POTW treatment plant in accordance with the SPDES permit and all other applicable Westchester County, New York State and federal laws. Recognizing that there is insufficient sewer capacity to service the entire Town, it was determined that uncommitted reserve capacity would be allocated in accordance with the provisions of Section 91-14. Chapter 91, Section 14.B(3) states that “[w]hen an approval of the Planning Board, Zoning Board of Appeals or Building Inspector or a change in tenancy results in a new or modified building with indoor plumbing fixtures or any increased wastewater flow from an existing building, the Commissioner [of Public Works] may allocate the new wastewater flow in accordance with the requirements of § 91-14.D(1) below. The property owner of the new or modified building shall provide a water conservation plan as described in this section.”
3. The Town is aware that a significant number of land use applications eligible to access the Sewer System’s excess capacity have been filed, are in the process of being filed, or will be filed, that would require the Commissioner of Public Works to allocate new wastewater flow in accordance with the provisions set forth in Section 91-14.D(1). The Town is further concerned that in a short time all the excess capacity available from the POTW treatment plant may be depleted. The accelerated development allowed through the use of the continued allocation of excess capacity is also a concern since it could impact the distribution to different property owners and developments in the Hamlets of Bedford Hills and Katonah.
4. The use of the POTW’s excess capacity is of special concern to the Town Board. Therefore, it is the intent and purpose of this Local Law to establish a temporary moratorium on development that requires the allocation of excess sewer capacity in order to ensure the orderly development of the Town, to limit potential impacts of new development through the use of the POTW excess capacity and to evaluate the use of the excess capacity. Imposition of a moratorium will also allow the Town sufficient time to evaluate the use and method of allocation of the POTW excess capacity. In addition, the intent and purpose of this local law is to allow the Town a measured amount of time to review and revise certain local laws, specifically Town Code Chapter 91, to address the use and method of allocation of the excess capacity.

SECTION 3. MORATORIUM

1. Except as set forth herein below, as of September 22, 2020 and continuing from that date and for a period of three (3) months following the date on which this Local Law is filed with the Secretary of State, no application for a building permit, area variance, use variance, special use permits, site plan approval, or subdivision approval will be

reviewed by the Building Department, Town Board, Planning Board or Zoning Board of Appeals (“Land Use Boards”), and no permit or approval shall be issued by the Building Department or any Land Use Board for the modification, expansion or establishment of any development within the Town that requires an allocation of excess sewer capacity pursuant to Chapter 91, Section 14.B(3), until this ordinance has expired or has been repealed according to applicable law.

2. All applications for a building permit, use variance, area variance, special use permit, site plan approval and subdivision approval that require an allocation of excess sewer capacity pursuant to Chapter 91, Section 14.B(3), that received final approval at the time this Local Law was adopted shall be exempt from the moratorium on the allocation of excess capacity pursuant to Chapter 14, Section 14.B(3).
3. Any application for a building permit, area variance, use variance, special use permits, site plan approval, or subdivision approval that requires an allocation of excess sewer capacity pursuant to Chapter 91, Section 14.B(3), that was filed prior to or on September 22, 2020, may continue to be reviewed, public hearings may be held and other proceedings may be considered with respect to such applications, and approvals may be issued to the extent all applicable requirements have been satisfied, and such applications shall also be exempt from the moratorium on the allocation of excess capacity pursuant to Chapter 14, Section 14.B(3).
4. The Town Board may, by resolution, terminate this moratorium prior to its expiration, or alternatively, extend the moratorium for a period of ninety (90) days or such other time period, as the Town Board, in its sole discretion, deems necessary to allow for the further comprehensive study of the impacts of development on the Town’s use and allocation of excess sewer capacity and preparation and adoption of regulations and amendments pertaining to and to address the impacts of such development and methods of allocation of excess sewer capacity.
5. Pursuant to Municipal Home Rule Law Section 10, this Local Law shall supersede any inconsistent provisions of New York State General City Law for the entire duration of this moratorium, including any extension thereof.

SECTION 4. ADMINISTRATIVE RELIEF FROM MORATORIUM.

1. In order to prevent an unlawful taking of property and to prevent irreparable harm, the Town Board is authorized to grant limited relief from this moratorium pursuant to the standards and requirements herein. An applicant seeking such relief shall be required to show by clear and convincing evidence, including credible dollars and cents proof, that the applicant cannot make any reasonable use of its property due solely to the moratorium; that the moratorium prohibits fulfillment of the applicant’s reasonable investment-backed expectations; that the moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the moratorium.

2. An application may be made in writing to the Town Board requesting an exemption from the provisions herein. After due notice and a public hearing on such application, the Town Board may grant an exemption with such conditions as it may deem reasonable and necessary, provided such exemption is the minimum relief necessary.
3. All such applications to the Town Board shall be deemed Unlisted actions under SEQRA. In the event relief from the moratorium is granted by the Town Board, the applicant shall proceed to the Town's Land Use Boards to apply for required development approvals. Notwithstanding any relief granted pursuant to this section, a development approval shall not be granted unless the approved application complies with all zoning and all other requirements in effect on the date of approval.
4. The applicant or any other person aggrieved by a decision of the Town Board made pursuant to this section may apply to the State Supreme Court pursuant to Article seventy-eight (78) of the Civil Practice Laws and Rules.

SECTION 5. SEPARABILITY

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

SECTION 6. EFFECTIVE DATE

This Local Law shall take effect immediately upon adoption and filing with the Secretary of State as provided by the Municipal Home Rule Law.